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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/750,812

12/28/2000

Charles A. Eldering

T733-10

8268

27832

7590

07/08/2004

EXPANSE NETWORKS, INC.  
6206 KELLERS CHURCH ROAD  
PIPERSVILLE, PA 18947

EXAMINER

MANNING, JOHN

ART UNIT

PAPER NUMBER

2614

DATE MAILED: 07/08/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/750,812

Applicant(s)

ELDERING ET AL.

Examiner

John Manning

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 11 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 9 recites that the subavails are grouped by combining a plurality of subavails across different channels; whereas, claim 11, which depends there from, recites that the subavails are gathered from the same channel. The specification does not provide support for subavails being grouped by combining a plurality of subavails across different channels as well as being gathered from the same channel at the same time. For the sake of examination the examiner will assume that claim 11 depends upon claim 1.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4, 10, 12, 14, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Bryant et al. (US Pat No 5,652,615).

In regard to claim 1, Bryant discloses a system and method of distributing demographically targeted advertisements. The claimed step of "recognizing one or more advertisement opportunities (avails)" is met by Figure 1. "Program segments 310 and 320, according to the invention, can be inserted or selected at points 110, 111, 120, 131, 140, 150, 160, 170 of the network 100" (Col 5, Lines 23-25). By inserting the program segments 310 and 320, the system inherently recognizes the advertisement opportunities. The claimed step of "creating a plurality of subavails based on the recognized avails, wherein each of the subavails is directed at a particular target audience group" is met by Figure 1. "The segments are adjacently arranged in a temporal manner, substantially without overlap, and with the base and fill segments alternating" (Col 4, Lines 48-50). "The different fill segments 320 can be separately identified" (Col 5, Lines 10-11). "In a preferred embodiment of the invention, the segments 310 and 320 are separately identified as described below. During distribution of the program, the broadcaster or cable operator can insert segments and select segments based on the identification of the segments. If the selection is done in the STB 200, individual customers can be targeted" (Col 5, Lines 34-39). The claimed step of "aggregating the subavails to generate one or more groups of subavails" is met by Figure 3. "It is proposed that multiple fill segments be concurrently carried on the circuit assigned to the program during their allocated time periods" (Col 5, Lines 4-6). Therefore, the fill segments or "subavails" are grouped.

In regard to claim 4, Bryant discloses gathering subscriber characteristics of the target group and determining a correlation between the subscriber group and the subavails. "The memory buffer 230 can also store data which is a "profile" of the customer demographics, e.g., age, income, location, etc. The profile can be used to selectively decode the broadcast signals as explained below" (Col 4, Lines 2-5).

In regard to claim 10, discloses that the subavails are grouped by combining a plurality of time-sequenced subavails. "The segments are adjacently arranged in a temporal manner, substantially without overlap, and with the base and fill segments alternating" (Col 4, Lines 48-50).

In regard to claim 12, Bryant discloses a system and method of distributing demographically targeted advertisements. The claimed limitation of "an avail opportunities recognition module for recognizing advertising opportunities" is met by Figure 1. "Program segments 310 and 320, according to the invention, can be inserted or selected at points 110, 111, 120, 131, 140, 150, 160, 170 of the network 100" (Col 5, Lines 23-25). By inserting the program segments 310 and 320, the system inherently recognizes the advertisement opportunities. The claimed limitation of "a subavail generation module for creating a plurality of subavails based on the recognized avails" is met by Figure 1. "The segments are adjacently arranged in a temporal manner, substantially without overlap, and with the base and fill segments alternating" (Col 4, Lines 48-50). "The different fill segments 320 can be separately identified" (Col 5, Lines 10-11). "In a preferred embodiment of the invention, the segments 310 and 320 are separately identified as described below. During distribution of the program, the

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broadcaster or cable operator can insert segments and select segments based on the identification of the segments. If the selection is done in the STB 200, individual customers can be targeted" (Col 5, Lines 34-39). The claimed limitation of "a subavail aggregation module for aggregating the subavails to generate one or more groups of subavails" is met by Figure 3. "It is proposed that multiple fill segments be concurrently carried on the circuit assigned to the program during their allocated time periods" (Col 5, Lines 4-6). Therefore, the fill segments or "subavails" are grouped.

In regard to claim 14 and 15, Bryant discloses gathering subscriber characteristics of the target group and determining a correlation between the subscriber group and the subavails. "The memory buffer 230 can also store data which is a "profile" of the customer demographics, e.g., age, income, location, etc. The profile can be used to selectively decode the broadcast signals as explained below" (Col 4, Lines 2-5).

In regard to claim 17, discloses that the subavails are grouped by combining a plurality of time-sequenced subavails. "The segments are adjacently arranged in a temporal manner, substantially without overlap, and with the base and fill segments alternating" (Col 4, Lines 48-50).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-3, 5-9, 11, 13, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryant et al. in view of Eldering (WO 00/33163).

In regard to claim 2, Bryant discloses a system and method of distributing demographically targeted advertisements. Bryant fails to explicitly disclose "selling the groups of subavails to one or more prospective advertisers". Eldering teaches selling advertisements opportunities to one or more advertiser so as to generate revenue for the content provider. "In a preferred embodiment of the present invention, a pricing policy can be defined. The content/opportunity provider 160 can charge advertiser 144 for access to consumer 100 during an opportunity" (Page 9, Lines 1-4). Consequently, it would have been obvious to one of ordinary skill in the art to modify Bryant to sell advertisements opportunities to one or more advertiser so as to generate revenue for the content provider.

In regard to claim 3, Eldering discloses that advertiser 144 send a bid to the content provider as shown in Figure 7. "Advertiser 144 transmits a bid contained within a bid message 730. The bid represents the amount that an advertiser is willing to pay for a transmission opportunity" (Page 23, Lines 7-9). Eldering also discloses selling the advertisement opportunity to the highest bidder. "Once the content/opportunity provider 160 has determined an acceptable bid, an acceptance message 740 is sent to advertiser 144" (Page 23, Lines 20-22). Where acceptable bit is interpreted to be the highest bid.

In regard to claim 5, Bryant discloses a system and method of distributing demographically targeted advertisements. Bryant fails to explicitly disclose the

"determining pricing for the groups of subavails based on the correlation". Eldering teaches determining pricing for the groups of subavails based on the correlation so as to maximize revenue for the content provider. The "price charged for access to consume 100 by content/opportunity provider varies as a function of the applicability of the advertisement to consumer 100" (Page 9, Lines 5-8). Consequently, it would have been obvious to one of ordinary skill in the art to modify Bryant with determining pricing for the groups of subavails based on the correlation so as to maximize revenue for the content provider.

In regard to claim 6, it is inherent that that the groups of subavails are sold based on the determined pricing. The "price charged for access to consume 100 by content/opportunity provider varies as a function of the applicability of the advertisement to consumer 100" (Page 9, Lines 5-8).

In regard to claim 7, the Bryant discloses a system and method of distributing demographically targeted advertisements. Bryant fails to explicitly disclose the claimed steps of "transmitting the correlation results to one or more prospective advertisers", "receiving one or more bids for each group of subavails" and "selling the group of subavails to the highest bidder". The Eldering reference teaches the steps of "transmitting the correlation results to one or more prospective advertisers", "receiving one or more bids for each group of subavails" and "selling the group of subavails to the highest bidder" as show in Figure 7 so as to maximize revenue for the content provider. "As illustrated in FIG. 7, the combined correlation and pricing/fee message 720 is received by content/opportunity provider 160, who transmits the correlation result to



advertiser 144" (Page 22, Lines 33-34; Page 23, Lines 1-2). "Advertiser 144 transmits a bid contained within a bid message 730. The bid represents the amount that an advertiser is willing to pay for a transmission opportunity. In a preferred embodiment the bid is calculated by advertiser 144 based on the results of the correlation" (Page 23, Lines 7-11). The claimed step of "selling the group of subavails to the highest bidder" is implied. Consequently, it would have been obvious to one of ordinary skill in the art to modify Bryant with the steps of "transmitting the correlation results to one or more prospective advertisers", "receiving one or more bids for each group of subavails" and "selling the group of subavails to the highest bidder" so as to maximize revenue for the content provider.

In regard to claim 8, the Bryant discloses a system and method of distributing demographically targeted advertisements. Bryant fails to explicitly disclose the claimed steps of "receiving information about one or more advertisements to be placed in the subavails", "characterizing the advertisements" and "correlating the advertisements and the subscriber groups, whereby the advertisements are inserted in the subavails based on the correlation". The Eldering reference teaches the steps of "receiving information about one or more advertisements to be placed in the subavails", "characterizing the advertisements" and "correlating the advertisements and the subscriber groups, whereby the advertisements are inserted in the subavails based on the correlation" as show in Figure 7, so as to maximize revenue for the content provider. The claimed step of "receiving information about one or more advertisements to be placed in the subavails" is met by Figure 7. "Advertiser 144 then transmits an ad characterization

710. The ad characterization can be received by content/opportunity provider 160 or directly by profiler 140" (Page 22, Lines 6-9). The claimed step of "characterizing the advertisements" is met by Figure 7. "Profile 140 retrieves consumer characteristics which can be in the form of probabilistic information regarding the consumer, deterministic data regarding the consumer, or product preference information" (Page 22, Lines 21-24). The claimed step of "correlating the advertisements and the subscriber groups, whereby the advertisements are inserted in the subavails based on the correlation" is also met by Figure 7. "Profiler 140 performs a correlation operation, the results of which are transmitted as a correlation factor or other correlation result to content/opportunity provider 160. In a preferred embodiment a pricing/fee arrangement message which represents the price for providing the advertisement as well as a fee for performing the correlation or accessing the consumer profile is transmitted along the correlation result" (Page 22, Lines 25-32). Consequently, it would have been obvious to one of ordinary skill in the art to modify Bryant with the steps of "receiving information about one or more advertisements to be placed in the subavails", "characterizing the advertisements" and "correlating the advertisements and the subscriber groups, whereby the advertisements are inserted in the subavails based on the correlation" so as to maximize revenue for the content provider.

In regard to claim 9, the combined teaching fails to explicitly disclose that the subavails are grouped by combining a plurality of subavails across different channels. However, the examiner takes OFFICIAL NOTICE that it is notoriously well known to group plurality of advertisements across different channels so as to increase the chance

of the profiled subscriber receiving the targeted advertisement over a channel range. Consequently, it would have been clearly obvious to one of ordinary skill in the art to modify the combination of Bryant and Eldering to have subavails that are grouped by combining a plurality of subavails across different channels so as to increase the chance of the profiled subscriber receiving the targeted advertisement over a channel range.

In regard to claim 11, the combined teaching fails to explicitly disclose that the subavails are gathered from the same channel. However, the examiner takes OFFICIAL NOTICE that it is notoriously well known to have advertisements that are gathered from the same channel so as to increase the chance of the profiled subscriber receiving the targeted advertisement over time. Consequently, it would have been clearly obvious to one of ordinary skill in the art to modify the combination of Bryant and Eldering to have subavails that are gathered from the same channel so as to increase the chance of the profiled subscriber receiving the targeted advertisement over time.

In regard to claim 13, Bryant discloses a system and method of distributing demographically targeted advertisements. Bryant fails to explicitly disclose "selling the groups of subavails to one or more prospective advertisers". Eldering teaches selling advertisements opportunities to one or more advertiser so as to generate revenue for the content provider. "In a preferred embodiment of the present invention, a pricing policy can be defined. The content/opportunity provider 160 can charge advertiser 144 for access to consumer 100 during an opportunity" (Page 9, Lines 1-4). Consequently, it would have been obvious to one of ordinary skill in the art to modify Bryant to sell

advertisements opportunities to one or more advertiser so as to generate revenue for the content provider.

In regard to claim 16, the combined teaching fails to explicitly disclose that the subavails are grouped by combining a plurality of subavails across different channels. However, the examiner takes OFFICIAL NOTICE that it is notoriously well known to group plurality of advertisements across different channels so as to increase the chance of the profiled subscriber receiving the targeted advertisement over a channel range. Consequently, it would have been clearly obvious to one of ordinary skill in the art to modify the combination of Bryant and Eldering to have subavails that are grouped by combining a plurality of subavails across different channels so as to increase the chance of the profiled subscriber receiving the targeted advertisement over a channel range.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as follows:

- The Osborne (US Pat No 4,974,252) reference discloses an interactive commercial network.
- The Brown (US Pat No 6,023,686) reference discloses an on-line bidding session with bid pooling.
- The Odom et al. (US Pat No 6,058,379) reference discloses a real-time network exchange with seller specified exchange parameters and interactive seller participation.

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- The Feezell et al. (US Pat No 6,253,189) reference discloses a system and method for completing advertisement time slot transaction.
- The Harrington et al. (US Pat No 6,161,099) reference discloses a process and apparatus for conducting auctions over electronic networks.
- The Ausubel (US Pat No 5,905,975) reference discloses a computer implemented methods and apparatus for actions
- The Fisher et al. (US Pat No 5,835,896) reference discloses a method and system for processing and transmitting electronic auction information.
- The Goldhaber et al. (US Pat No 5,794,210) reference discloses an attention brokerage system.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Manning whose telephone number is 703-305-0345. The examiner can normally be reached on M-F: 7:30 - 5:00 (off every other Wednesday).

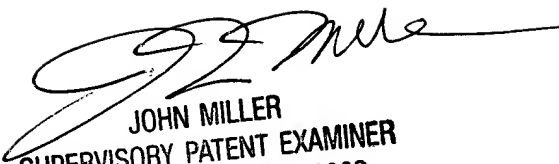
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W Miller can be reached on 703-305-4795. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-9695 for regular communications and 703-746-9695 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to customer service whose telephone number is (703) 308-HELP.

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JM  
June 28, 2004



JOHN MILLER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600